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By Electronic Filing

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

Re: *Written Ex Parte*  
Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98; Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147.

Dear Ms. Dortch:

In their filings in this proceeding, AWS and other CMRS carriers have demonstrated the extraordinary extent to which they must rely on incumbent LEC transport.<sup>1/</sup> AWS has also explained that CMRS carriers have no better alternatives to ILEC transport than do competitive wireline carriers.<sup>2/</sup> If alternative providers of transport are not available for wireline competitors, they are also not available for CMRS carriers. CMRS carriers use incumbent LEC transport in fundamentally the same way and for the same purpose as wireline competitors.<sup>3/</sup> If there is a

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<sup>1/</sup> See, e.g., *Implementation of Local Competition Provisions of the Telecom Act of 1996*, CC Docket No. 96-98, Petition for Declaratory Ruling, at 7 (filed Nov. 19, 2001) ("AWS/VoiceStream Petition"); *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchanges Carriers*, CC Docket 01-338, Comments of AT&T Wireless Services, Inc. at 24-25 (filed April 5, 2002) ("AWS Comments"); *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchanges Carriers*, CC Docket 01-338, Comments of VoiceStream Wireless Corporation at 15-16 ("VoiceStream Comments"); *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchanges Carriers*, CC Docket 01-338, Comments of the Cellular Telecommunications and Internet Association at 7; *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchanges Carriers*, CC Docket 01-338, Comments of Sprint Corporation, at 49; *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchanges Carriers*, CC Docket 01-338, Comments of Nextel Communications, Inc., at 2-4.

<sup>2/</sup> AWS/VoiceStream Petition at 7-9; Letter from Michael H. Pryor to Marlene Dortch, Secretary, Federal Communications Commission, December 18, 2002 ("AWS December 18 *ex parte*").

<sup>3/</sup> AWS December 18 *ex parte* at 6-8.

difference, it is that CMRS carriers may require even more transport than wireline competitors.<sup>4/</sup> In order to fulfill the “hope” of inter-modal, facilities-based competition from CMRS carriers for residential consumers, CMRS carriers must have cost-based access to this essential input.<sup>5/</sup>

A number of CLECs have advocated a more granular, wire center-by-wire center analysis to assess the availability of alternatives to incumbent LEC transport and to thus determine impairment. These proposals are designed to ensure that real alternatives to incumbent LEC transport are actually available in the market place before lifting the incumbent LECs’ unbundling obligation. These proposals generally require that a specified number of viable, alternative carriers offer capacity on the required route. These proposals also generally call for state commissions to determine whether the impairment standard is satisfied for any particular route.

A critical aspect to these proposals is that competitive carriers must provide transport that connects both end points of the required route. It is wholly insufficient that competitive carriers may be collocated in wire centers at only one end of the route, as some of the incumbent LECs have proposed. Competitive carriers have demonstrated the inadequacies of impairment tests that look to only one end of the circuit. WorldCom, for example, explained that it must obtain transport from end offices that serve WorldCom’s customers, and the fact that WorldCom or other competitors may be collocated in another wire center used as a transport hub is completely irrelevant to the state of transport competition from the end office to the hub.<sup>6/</sup>

Exactly the same analysis applies to CMRS carriers. CMRS carriers often use hubbing strategies in the same way as wireline competitors.<sup>7/</sup> The existence of competitive transport providers collocated at the hubs provides no evidence that AWS has alternatives at the far-flung end offices where AWS leases DS-1 circuits to cell sites. If there are no competitors collocated at a wire center, as is the case with 86% of BOC wire centers,<sup>8/</sup> AWS has no ability to obtain alternative transport either from the wire center to another ILEC wire center or a hub, or from the end office wire center to a cell site.

AWS thus supports the use of a granular test that assesses the existence of actual competitive alternatives between the two points of the required route. A finding of impairment, or lack of impairment, based on such an analysis should be equally applicable to CMRS carriers. AWS also recognizes that, as a practical matter, the state commissions may be in the best position to implement such an impairment test. Although state commissions have no jurisdiction

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<sup>4/</sup> AWS/VoiceStream Petition at 7; *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchanges Carriers*, CC Docket 01-338, Comments of Dobson Communications Corporation at 9 (“CMRS carriers are uniquely disadvantaged because they have more geographically dispersed needs than CLECs”).

<sup>5/</sup> See Prepared Remarks of Chairman Powell, “Digital Broadband Migration” Part II, October 23, 2001 (“[W]e will more fully consider that real competitive choices that have been introduced through alternative platforms, particularly wireless and cable telephony that may be the best hope for residential consumers.”)

<sup>6/</sup> Letter from Ruth Milkman to Marlene H. Dortch, Secretary, Federal Communication Commission, CC Docket Nos. 01-338, 98-98, 98-147 (filed October 30, 2002) (“WorldCom October 30, 2002 *ex parte*”) at 4-5.

<sup>7/</sup> See e.g., AWS December 18 *ex parte* at 7.

<sup>8/</sup> WorldCom October 30, 2002 *ex parte* at 4 (citing UNE Fact Report 2002 at Section III-2).

over the terms of CMRS carrier entry, the commissions have jurisdiction, and ample experience, to assess the extent of competition to incumbent LEC transport facilities. AWS is certainly willing to abide by the results of a state commission's assessment of the extent of transport competition at incumbent LEC wire centers.

AWS is not seeking better access to unbundled network elements than is available to wireline competitors, only comparable access for what is fact comparable use of the same network elements. It is thus fair and reasonable that any granular impairment analysis that the Commission adopts for dedicated transport should be equally applicable to wireline and wireless competitors of the incumbent LECs.

Respectfully submitted,

/s/ Douglas I. Brandon

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